IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 1653 OF 2007

1. Khangaram Mangaram Choudhary,

2. Ashok Bhadwandas Motwani,

3. Jagannath Subbaya Shetty,

4. Santosh Narayan Nayar,

5. Sudhakar Angara Pujari. ... Applicants.

V/s.

State of Maharashtra. ... Respondent.

Rajeev Patil i/b. M.K.Kocharekar
for the applicants.

Rajesh More, A.P.P. for the State.

CORAM: V.C.DAGA, J.

DATED: 8th August 2007.

P.C.:

. Heard.

. Perused application.

2. This is an application preferred by five applicants under section 438 of Code of Criminal Procedure, 1973 (Cr.P.C.) seeking anticipatory bail. The applicants are apprehending their arrest in

connection with C.R.No.I-5/2007 registered with the Ganeshpuri Police Station, Thane for the offences punishable under sections 395, 397, 412 read with section 34 of Indian Penal Code.

The Facts :

3. The applicants are arraigned as accused as receiver of the stolen properties involved in the robbery. The robbery itself took place on 6th January, 2007 in a jewelry shop run under the name and style "K.K.Jewelers" situated at Ambadi Naka, taluka- Bhiwandi, district- Thane.

4. As per the F.I.R., the stolen property in the nature of gold ornaments was to the extent of Rs.19,50,000/-. That the persons who had actually committed robbery were arrested. The main accused out of them by name Laxman Patil was interrogated. But he did not give any useful information. Thereafter, he was subjected to NARCO test at the request of police in Government Forensic Science Laboratory at Bangalore. The report of the said NARCO test is that, the jewelry shop of applicant No.1 and hotels with which the remaining applicants are concerned were revealed by the accused Laxman. It was disclosed by him that the stolen property was sold to the present applicants; that is how they were, subsequently, made

accused in the concerned crime.

5. The case of the prosecution is that the applicants themselves, thereafter, on or about 21st March, 2007, voluntarily brought the gold ornaments and handed over the same to the investigating agency. By that time, the other accused were already produced for remand.

6. The details of the applicants and recovery of ornaments worth in rupees from them is as under:

1. Jagannath Subbaya Shetty, Manager of Dwarka Hotel - ornaments of Rs.1,07,550/-;
2. Santosh Narayan Nair, owner of Pushpanjali Hotel - ornaments of Rs.1,29,600/-;
3. Sudhakar Angaram Poojari, Manager of Swapna Shrushti Hotel - ornaments of Rs.1,71,000/-;
4. Ashok B. Motwani, Manager of Great Maratha Hotel - ornaments of Rs.99,009/-;
5. Khangaram Mangaram Choudhary, owner of Krishna Jewellers - ornaments of Rs.2,17,350/-.

7. That after the present applicants handed over the gold ornaments to the police, remand application was made to the Magistrate on 21st March, 2007. Reference in that remand application was also made to the NARCO test and handing over of the ornaments. Subsequently, on 29th March, 2007, the police took identification parade of the ornaments handed over by the applicants. It appears that in the identification parade, the complainant identified some of the ornaments. Remaining ornaments could not be identified, may be because those ornaments may not be part of the robbery from his shop.

8. In the second remand application dated 14th April, 2007, the applicants were shown as accused, though, in the earlier application they were shown as witnesses, which was made in between the period the identification parade of the stolen property was conducted by the police.

9. It appears that certain allegations were made by the applicants against the police, which were subject matter of judicial scrutiny by the learned Sessions Judge, Thane. They were also subject matter

of scrutiny in Criminal Writ Petition No.793/2007; wherein certain directions were issued by the Division Bench of this Court to the Director General of Police of Maharashtra directing independent inquiry into the allegations made against the investigating agency.

10. In the aforesaid backdrop, the applicants had moved joint application for anticipatory bail before the Sessions Court, Thane being Criminal Bail Application No.576/2007. The said application was heard and came to be rejected by a reasoned order; wherein the learned Sessions Judge observed as under :

> "I have also perused the results of the NARCO Test contained in the letter of the Assistant Director of the Laborating. It clearly shows that the names of the hotels with which applicant Nos.2 to 5 are concerned and the name of the jewelry shop of the applicant No.1 is concerned, are mentioned. This means that the action that is taken by the police is based upon substantial ground and progress of the investigation. It is pointed out by the learned APP that there is a chain of similar robberies in Thane District and in fact the interrogation of the arrested accused has revealed that they are involved in those other offences also. It is also pointed out that the only part of the property handed over by the applicants is identified by the complainant and others and therefore, <u>it is necessary to interrogate the applicants because rest of the property could be involved in other offences. The submission certainly makes some sense</u>. The identification of part of the property only would also indicate that

> there is no substance in the allegation of forcible recovery of money from the applicants for preparing ornaments. If that was so, there was no reasons why the complainant identified only part of the property."
>
> (emphasis supplied)

11. The applicants, after unsuccessful attempt in seeking bail from the Sessions Court, have invoked jurisdiction of this Court under section 438 of Cr.P.C.

The Submissions :

12. Mr.Patil, learned counsel appearing for the applicants reiterated the same submissions which were made before the learned Sessions Judged and went on to urge that in remand application dated 21st March, 2007 the applicants were shown as witnesses, whereas in the subsequent remand application dated 14th April, 2007 they were shown as accused. He further submits that the ornaments were handed over to the applicants by one Laxman Patil by way of security since he was in need of money and that the applicants were not aware that the said ornaments represent the character of stolen property or that the said Laxman Patil was involved in the robbery.

13. Mr.Patil further submits that the applicants have made certain allegations against the police officials and also filed writ petition against them and, therefore, with a view to take revenge against them, the present applicants have been made accused and custody is being claimed by the police.

14. The State has filed two affidavits to oppose this application for bail contending that, prima facie; material exist against the applicants. The ornaments came from the custody of the applicants. That the names of applicant Nos.2 to 5 and that of jewelry shop of applicant No.1 came to the surface in the NARCO test and that has given clue to the investigating agency to make further progress in the matter. It is only after the NARCO test, the jewelry came to be seized from the custody of the applicants.

15. The learned A.P.P, appearing for the State, submits that the identification parade was conducted by Executive Magistrate, Bhiwandi on 29th March, 2007. In the aforesaid crime, the stolen ornaments were of about 19,50,000/-. The police recovered ornaments to the tune of Rs.14,23,009/- out of which ornaments to

the tune of Rs.70,000/- are unidentified. It is contended on behalf of the prosecution that the police is yet to recover the remaining ornaments to the tune of Rs.5,96,991/- and for that purpose custodial interrogation of the present applicants is very much necessary.

16. The learned A.P.P. also urged that applicant Nos.2 to 5 being hoteliers were not expected to be in possession of the ornaments in the natural course of their hotel business. He further submits that no amount by way of hand loan was paid by them to Laxman Patil as against the said ornaments, as such there was no reason for them to keep these ornaments as security. Therefore, the story sought to be built up by the applicants for retaining the gold ornaments by way of security holds no water.

17. Learned A.P.P. further submits that the ornaments which were not identified by the complainant as theirs has left the question unanswered as to whom they belong. According to him, it is necessary to investigate as to whether or not they are part of some other robbery.

Consideration :

18. Having heard both parties, having seen the prima facie material available on record to connect the present applicants with the act of receiving stolen property and considering the necessity of further investigation into the matter as highlighted by learned A.P.P., it is essential to have the custodial interrogation of the present applicants. In the circumstances, in my view, the applicants are not entitled to bail.

19. In the result, application is rejected.

JUDGE